

BEFORE THE  
SURFACE TRANSPORTATION BOARD

PROVIDENCE AND WORCESTER                    )  
RAILROAD COMPANY,                                )     Finance Docket No. 35393

227771

**Reply of Providence and Worcester Railroad Company to National Grid's  
Motion to Strike**

Providence and Worcester Railroad Company ("P&W") hereby submits the following reply in opposition to National Grid's Motion to Strike portions of P&W's opposition to National Grid's request for discovery and an extended procedural schedule. For the reasons set forth below, P&W's opposition to National Grid's request for discovery, evidentiary submissions and an extended procedural schedule is not a "reply to reply." Consequently, the Motion to Strike should be denied.

**I.     BACKGROUND**

P&W filed its Petition for Declaratory Order in this proceeding on July 20, 2010. On August 30, 2010, National Grid filed a reply to the Petition ("National Grid Reply"), in which it (1) argued that factual issues precluded a decision by the Board without discovery and evidentiary submissions, and (2) requested an extended procedural schedule to allow for a 60-day discovery period (hereinafter, the "Discovery Request"). On September 7, 2010, P&W filed a reply in opposition to National Grid's Discovery Request ("P&W Opposition").

As noted in the P&W Opposition, P&W expressly and specifically limited itself to (1) noting its opposition to the Discovery Request, and (2) explaining the reasons for its opposition to Discovery Request. In particular, P&W set forth three reasons for

opposing National Grid's Discovery Request. First, P&W explained that the further delay resulting from discovery and an extended schedule would prejudice P&W's ability build a second track on its own right-of-way, particularly in light of the year and a half it has already spent trying to cooperatively resolve this dispute with National Grid. *See* P&W Opposition, Part I.

Second, P&W explained that, given the applicable legal precedent regarding state preclearance and permitting requirements, P&W's Petition raises no factual issues requiring discovery or evidentiary submissions, and the specific factual issues suggested by National Grid do not require discovery because they are not material to the legal issue before the Board. *See* P&W Opposition, Part II. Third, P&W explained that the purported conflict between the Board's jurisdiction and other federal interests – an issue first raised in National Grid's Reply – also does not raise any factual issues requiring discovery. *See* P&W Opposition, Part III.

## **II. NATIONAL GRID'S MOTION TO STRIKE SHOULD BE DENIED**

In its Motion to Strike, National Grid appears to take the curious position that P&W is entitled to comment on National Grid's request for discovery and an extended procedural schedule, but is not entitled to explain why it believes National Grid is wrong in suggesting that discovery and an extended procedural schedule are required in this proceeding. National Grid acknowledges that the very thrust of its Reply was to demonstrate that "the Board must consider and resolve certain factual issues before it can rule on the merits of the Petition." Motion to Strike at 1. Nonetheless, National Grid claims that it was improper in opposing the Discovery Request for P&W to respond "substantively" to National Grid's reliance on the incorrect legal standard governing

preemption in this proceeding or its attempt to raise a purported conflict with other federal interests – the premises underlying National Grid’s Discovery Request.

National Grid included in its Reply not only a bare request for discovery and evidentiary submissions, but also its grounds for asserting that such discovery and evidentiary submissions were required. P&W is entitled not only to oppose National Grid’s Discovery Request, but also to explain to the Board the reasons for its opposition to discovery and an extended schedule – even if doing so requires responding to assertions made in National Grid’s Reply. Accordingly, P&W is not prohibited by the Board’s rules from pointing out that the legal standard upon which National Grid relies in requesting discovery and evidentiary submissions is simply not applicable to the state preclearance statute at issue in this proceeding. Similarly, there is nothing in the Board’s rules that prohibit P&W from pointing out that the purported conflict between the Board’s jurisdiction and other federal interests does not raise any factual issues requiring discovery. Simply put, National Grid cannot immunize from scrutiny its request for discovery, evidentiary submissions and an extended schedule by putting the purported grounds for its request in its Reply rather than in a separate motion.<sup>1</sup>

For all the foregoing reasons, The Board should deny National Grid’s Motion to Strike.

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<sup>1</sup> National Grid also claims that P&W improperly expressed disagreement with (1) factual statements in National Grid’s Reply, and (2) National Grid’s representations regarding its willingness to cooperate with P&W. To the contrary, however, P&W’s Opposition did not specifically dispute National Grid’s factual assertions – it merely noted that although it refrained from addressing those assertions given the limited scope of P&W’s filing, it did not intend to concede the accuracy of National Grid’s factual assertions. Similarly, in explaining why the further delays associated with an extended procedural schedule would prejudice P&W, P&W’s Opposition merely pointed out that, despite National Grid’s expressions of its willingness to cooperate, it has made little noticeable progress in removing its poles in the year and a half since P&W first requested that it do so.

Respectfully submitted,



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DATE: September 10, 2010

**CERTIFICATE OF SERVICE**

I do hereby certify that I have delivered a true and correct copy of the foregoing document to the following addressees at the addresses stated by depositing same in the United States mail, first class postage prepaid, or by email transmission, this 10<sup>th</sup> day of September 2010:

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A handwritten signature in black ink, appearing to read "Stephen August", is written over a horizontal line.